

UNITED STATES DEPARTMENT OF THE INTERIOR

BIPARTISAN INFRASTRUCTURE LAW SEC. 40601 ORPHANED WELL PROGRAM

~~PHASE 1 (FISCAL YEAR 2023)~~ STATE FORMULA GRANT GUIDANCE

I. INTRODUCTION

President Biden signed the Bipartisan Infrastructure Law (BIL; [Public Law 117-58](#)) on November 15, 2021, making a once-in-a-generation investment in the Nation's infrastructure and economic competitiveness. This landmark investment will rebuild America's critical infrastructure, tackle the climate crisis, address legacy polluted sites, advance environmental justice, and drive the creation of good-paying jobs that provide a free and fair chance to join a union. By addressing long overdue infrastructure and environmental improvements and strengthening our resilience to the changing climate, this investment in our communities across the country will grow the economy sustainably and equitably for decades to come.

Section 40601¹ of the BIL creates an orphaned well site plugging, remediation, and reclamation program within the Department of the Interior (DOI) to address orphaned wells and well sites on Federal lands. Subsection (d) creates a grant program for Tribes, and subsection (c) creates three types of grants for states:

1. Initial grants (Section 40601(c)(3))
2. Formula grants (Section 40601(c)(4))
3. Performance grants (Section 40601(c)(5))

This document sets forth the application process for States to receive Formula grants ~~in federal Fiscal Year 2023 (FY 2023)~~ and provides requirements for carrying out activities under the State Formula grants authorized by Sec. 40601(c)(4) of the BIL. ~~Funding available in FY 2023 is Phase 1 of the State Formula grant and is based on the formula DOI established as required by Sec. 40601(c)(4)(A) based on the Notice of Intent data provided by the States in December 2021. Total funding available in Phase 1 is \$500 million. DOI will publish the total amount available and State eligibility for subsequent phases based on State provided updates on documented well inventories and cost estimates.~~

This document indicates what information is **required** in applications for a ~~Phase 1~~ Formula grant and for expenditure of the grant funding. States are required to apply these practices to ~~meet the requirements of Sec. 40601(c)(4) promote consistent standards for well plugging and reclamation activities and facilitate the proper tracking of the program's benefits. The document also includes a number of strongly recommended best practices that can help maximize the benefits and transparency of activities carried~~

Commented [LW1]: Delete references to the phasing of formula grants throughout the document. See explanations in other comments.

If DOI were to continue to pursue the phased approach as outlined in the draft guidance, DOI would need to provide much more detail, such as the number and timing of phases, the deadlines for each phase, how unawarded or unobligated funds will roll over into subsequent phases, and how each state's fair share of the funding will be preserved. The revisions marked in this document do not address these details because they propose a different approach that complies with the IIA and meets the needs of most if not all states.

Commented [LW2]: DOI's proposed phasing approach does not comport with the IIA and impairs the ability of states to plan the work and use the funding successfully. For the majority of states, it will interrupt and delay, if not preclude, the work that might otherwise be accomplished in a few years. Under the IIA, states may submit one application for the total amount they are eligible to receive.

For the small minority of states that are eligible to receive the largest sums, both the states and DOI might benefit if a state divides the funding and submits multiple applications over time. This option should be discussed with the states and addressed in Section III or IV of the guidance.

Commented [LW3]: Except as expressly stated in the IIA, state programs are not required to meet federal standards for well plugging and reclamation activities or track benefits of the grants.

¹ Section 40601 amends Section 349 of the Energy Policy Act of 2005, but for simplicity all references to the amended Section 349 will be written as components of Section 40601 of the BIL in this document.

out with Formula grant funding.

II. DEFINITIONS

“Administrative costs” identified in Sec. 40601(c)(2)(B)(i) and 40601(c)(4)(B)(ii)(V), limited to not more than 10 percent of the funds received, are those costs that cannot be directly attributed to activities listed under Sec. 40601(c)(2)(A), i through viii, but instead to general grants management or program administration. Administrative costs can be expended for personnel or non-personnel costs, and can be direct or indirect, but should represent the costs to the State for managing the overall grant-funded work rather than preparation for and execution of individual projects.

“Award Date” is the date the award is signed by the Agreements Officer and may coincide with or precede the effective date of the grant (see “Date of receipt of the funds” below), based on project needs and discussions between the State and the Agreements Officer.

“Communities of color” are those communities with a higher than national average percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word “alone” in this case indicates that the person is of a single race, not multiracial. A block group is an area defined by the Census Bureau that usually has in the range of 600-3,000 people living in it.²

“Community” – either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.³

“Date of receipt of the funds” - as identified in Sec. 40601(c)(4)(D) is the effective date of the grant, which is the start of its period of performance, as determined by the DOI Agreement Officer in consultation with the receiving State. The effective date begins the 5-year period within which the State must obligate funds or return such unobligated funds to DOI. In most cases, the effective date of award will coincide with the award date.

“Documented Well” is a well for which the State or other regulatory agency has a drilling report, completion report, inspection report, or other record establishing the existence of the well, including its precise location. (e.g., latitude and longitude in decimal degrees). The term “undocumented” refers to a well that is entirely unknown to the agency or a well of which the agency has some evidence, but which requires further records research or field investigation for verification.⁴

Commented [LW4]: States continue to ask questions about the proper classification of costs as administrative costs or project costs. Further discussion and guidance is needed.

Commented [LW5]: This phrase does not appear in the IOGCC definition.

² This definition is adopted from USEPA’s EJSCREEN definitions at: <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen#demoindex>.

³ Definition from OMB and CEQ Interim Implementation Guidance for the Justice40 Initiative (M-21-28) dated July 20, 2021.

⁴ Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies 2021. Interstate Oil and Gas Compact Commission, page 4. This report is available at:

“Equipment” as defined in [2 CFR § 200.313](#) is tangible personal property (including information technology systems) having a useful life of more than one (1) year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See [2 CFR § 200.313](#) for the title, use, management, and disposition of equipment purchased with State Formula grant funds.

“Federal land” is defined in Sec. 40601(a)(1) as land administered by a land management agency within the Department of Agriculture or the Department of the Interior.

“Federal wells” – Orphaned wells and well sites on Federal land are considered “Federal wells” and are eligible for funding under the Sec. 40601(b) Federal Program. Orphaned wells—and well sites associated with such wells—that were drilled subject to a federal permit to drill may be considered Federal wells eligible for funding under the Sec. 40601(b) Federal Program, regardless of surface ownership. A State may use grant funds received under Sec. 40601 to plug and remediate Federal wells located on State or private land, with Federal subsurface, and may include those wells in its inventory of documented orphaned wells on State or private land. Any plugging and reclamation activities on such split-estate orphaned wells would be subject to the Federal government’s onshore plugging and reclamation standards and DOI approval prior to the start of operations.

“Low-income communities” are those communities that in the last 12 months had a median household income less than twice the poverty level.⁵

“Orphaned Well” – The term “orphaned well”, with respect to Federal or Tribal land, means a well that is not used for an authorized purpose, such as production, injection, or monitoring, and for which no operator can be located, the operator of which is unable to plug the well and to remediate and reclaim the well site, or that is in the National Petroleum Reserve - Alaska. With respect to State or private land, the term:

- (1) has the meaning given the term by the applicable State; or
- (2) if that State uses different terminology, has the meaning given another term used by the State to describe a well eligible for plugging, remediation, and reclamation by the State.

“Pre-Award Costs” – Per 2 CFR 200.458, Pre-Award Costs are those incurred after the award date and before the effective date of the Federal award and only with the written approval of the Federal awarding agency (DOI). DOI will evaluate pre-award costs on a case-by-case basis.

“Reclamation, restoration, or remediation” – These terms, with respect to State or

https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf.

⁵ This definition is similar to USEPA’s EJSCREEN definition at <https://www.epa.gov/ejscreen/ejscreen-map-descriptions#category-demographics>.

private land, have the meaning given these or similar terms by the applicable State.

Commented [LW6]: States use different terminology for the cleanup activities covered by the IJJA.

“Tribal and indigenous communities” are communities whose members make up a Federally recognized Indian Tribe, a State-recognized Indian Tribe, an Alaska Native community or organization, a Native Hawaiian organization, or any other community of indigenous people located in a State, including indigenous persons residing in urban communities.

“Unobligated amounts” — For purposes of determining the amount of reimbursement required the deadline for expenditure under Sec. 40601(e)(4)(D), “unobligated amounts” covers any funding that is not subject to a definite commitment that creates a legal liability of the State for an immediate or future payment for goods or services ordered or received, including by contract or sub-contract award.⁶

Commented [LW7]: Further discussion and guidance is needed regarding the deadline for expenditure. The IJJA addresses the deadline for obligation, but not expenditure. How long after funds are obligated may the work continue? May work continue after September 30, 2030? What is the deadline for paying invoices?

III. PERMISSIBLE USES OF FORMULA GRANT FUNDS

A. As provided under Section 40601(c)(2), a State may use funding for any of the following purposes:

Commented [LW8]: Tracks statute.

- i. plug, remediate, and reclaim orphaned wells located on State-owned or privately-owned land;
- ii. identify and characterize undocumented orphaned wells on State and private land;
- iii. rank orphaned wells based on factors including public health and safety, potential environmental harm, and other land use priorities;
- iv. make information regarding the use of funds received available on a public website;
- v. measure and track -
 - I. emissions of methane and other gases associated with orphaned wells; and
 - II. contamination of groundwater or surface water associated with orphaned wells;
- vi. remediate soil and restore native species habitat that has been degraded due to the presence of orphaned wells and associated pipelines, facilities, and infrastructure;
- vii. remediate land adjacent to orphaned wells and decommission or remove associated pipelines, facilities, and infrastructure;
- viii. identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on communities of color, low-income communities, and Tribal and indigenous communities; and
- ix. administer a the program to carry out any activities described in i. through viii. of work identified in its grant agreement.

Commented [LW9]: Tracks statute.

B. Formula grants are available for such activities where the surface is owned by the State or by a private party, including, potentially, individually owned Indian

⁶ See Government Accountability Office definitions at: <https://www.gao.gov/assets/gao-05-734sp.pdf>.

properties that are held in trust by the Secretary of the Interior but deemed by the State to be ‘orphaned wells’ on ‘private land,’ for purposes of compliance with this guidance. Funds may not be used for activities where the surface is owned by the United States or by an Indian Tribe, but may be used for Federal wells where the surface is owned by the State or by a private party, the sub-surface is owned in whole or in part by the United States, and appropriate agreements are in place with the Federal mineral manager, if that manager has determined the well to be orphaned.

C. Section 40601(c)(4)(A) allows States to apply for a Formula grant up to the State’s eligible amount as determined by DOI in accordance with Section 40601(C)(4)(A)(iv) and published by DOI on January 31, 2022 (see Attachment B), or as revised in a subsequent DOI publication of Formula eligibility.

D. Section 40601(c)(4)(D) - ~~Deadline for Expenditure:~~ A State that receives funds under the Formula grant authority shall reimburse the Secretary in an amount equal to the amount of funds that remain unobligated on the date that is **five years** after the date of receipt of the funds. In other words, all funds must be obligated within five years of the effective date of award, otherwise unobligated funds shall be reimbursed to the Secretary.

Commented [LW10]: DOI should comply with the IIAA by publishing the total amount available to each state immediately.

Commented [LW11]: Despite the heading, 40601(c)(4)(D) sets no deadline for expenditure. It merely requires the return of unobligated funds.

IV. INSTRUCTIONS FOR FORMULA GRANT APPLICATIONS

A. Application Date

- i. States may apply for ~~Phase 1~~ Formula grants beginning ~~[insert the earliest start date] that allows for meaningful engagement with the states on the draft guidance~~, 2023 from March 1, 2023 until 11:59 pm Eastern Time on August 31, 2023. States must apply within a timeframe sufficient to ensure that periods of performance and final obligations are complete prior to September 30, 2030.
- ii. Applications must be emailed to orphanedwells@ios.doi.gov. An email acknowledging receipt will be provided by DOI to the sending State within one business day of receipt.

Commented [LW12]: To avoid interruption of plugging work that began with initial grant funding, DOI should begin accepting formula grant applications as soon as possible. BUT DOI should not use this urgency as an excuse for avoiding meaningful engagement with the states. After delaying the release of the draft guidance for many months, and failing to work with the states partners in its development, DOI now appears to be rushing the guidance to completion. DOI must work with the states before finalizing the guidance.

Commented [LW13]: To avoid interruption of plugging work that began with initial grant funding, DOI should begin accepting formula grant applications as soon as possible. BUT DOI should not use this urgency as an excuse for avoiding meaningful engagement with the states. After delaying the release of the draft guidance for many months, and failing to work with the states partners in its development, DOI now appears to be rushing the guidance to completion. DOI must work with the states before finalizing the guidance.

B. Eligibility

To be eligible for a Formula grant, a State must have submitted a Notice of Intent to DOI by December 31, 2021. ~~The DOI published a list of eligible States appears in a press release dated January 31, 2022 (see Attachment B and available here). The eligibility amounts were b~~Based on data submitted by States by December 31, 2021, DOI has established the formula required by Sec. 40601(c)(4)(A). ~~The amount that each State is eligible to receive under the formula and represent the maximum a State may be awarded under Phase 1 appears in Attachment B. Failure to provide the required documented well data below will result in a reduction in the award amount.~~

Commented [LW14]: States should have flexibility to submit applications when they are ready, with the understanding that periods of performance and final obligations must be complete before September 30, 2030. The IIAA leaves the application period for formula and performance grants open ended. A state has the discretion to apply for a formula grant or any of the performance grants on a schedule that meets the needs of the state. DOI has no authority to impose an application window.

C. ~~Other~~ Required Elements

To be complete, the application should include sufficient details as described below to

Commented [LW15]: DOI must establish the formula as required by law. Also, DOI has no authority to reduce a state's award in this manner.

provide assurances regarding the ability of the state to properly carry out and oversee the activities to be funded. All Required Elements are Standard Forms or approved forms under OMB Control No. 1093-0012.

- i. Federal Forms: The following Federal forms with the latest versions are available at [Grants.gov](https://www.grants.gov) and must be submitted for a Formula grant request for funding (the application) to be complete. Digital signatures are acceptable:
 - (a) SF-424v4 Application for Federal Assistance
 - (b) SF-424A Budget Information for Non-Construction Programs
An SF-424A is a standard form that provides an estimate of the work's major budget categories ~~+(e.g., salaries, fringe benefits State employee labor,~~ training, equipment, contracting and other operational costs), where the sum total of the budget justification equals the overall Formula grant request.
 - (c) SF-LLL Disclosure of Lobbying Activities (if applicable)
The SF-LLL is required when the applicant uses non-federal funds to lobby in connection with the proposal AND the federal share of the proposal exceeds \$100,000. If the grant applicant does not engage in lobbying activities, it is sufficient to mark the SF-LLL form "N/A" for Not Applicable.
 - (d) OMB Form 4040-0010 Key Contacts Form
 - (e) OMB Control No. 1093-0012 (see subsection iv below)
- ii. Detailed Budget Proposal/Justification (SF-424A): The detailed budget narrative must include a narrative description of the budget categories and a clear delineation between project costs and administrative costs. This information supports and identifies the estimated costs provided in the SF-424A and includes an itemized budget breakdown with unit costs for the period of the Formula grant funding and the costs of personnel salaries, fringe benefits, project staff travel, materials and supplies, equipment, and consultants and contracts, e.g., for well plugging, site remediation, and site reclamation.
- iii. Project Abstract Summary (OMB Form Number 4040-0019): A project abstract of not more than one page will include the project purpose, activities to be performed, expected deliverables or outcomes, intended beneficiaries, and subrecipient activities (if known).
- iv. Work Plan (OMB Control No. 1093-0012):⁷ A State shall submit an application that includes the following:
 - (a) a description of—
 1. the State program for orphaned well plugging, remediation,

⁷ Particularly during the initial launch of state orphan well program, DOI provide states with direct technical assistance on their workplans in advance of the dispersal of funds.

and restoration, including legal authorities, processes used to identify and prioritize orphaned wells, procurement mechanisms, and other program elements demonstrating the readiness of the State to carry out proposed activities using the grant; including summary descriptions of:

Commented [LW16]: Tracks statute.

- a. the State's plugging standards, including the witnessing requirements (qualifications of witness, documentation);
- b. how salvaged material and equipment will be reused, recycled, or sold for scrap (with any resulting income reported to DOI);
- ~~1.c.~~ the State's authorities to enter private property, or a State's procedures to obtain landowner consent to enter such property, and in the event that any wells to be plugged will be accessed from Federal or Tribal land, how the State will gain access;

- ~~2. the processes and methodology used to identify and prioritize (i.e. rank for remediation activity) orphaned wells based on threats to public health and safety, environmental harm—particularly harms due to methane emissions—and other land-use priorities, including the remediation of hazardous sites in overburdened and underserved communities.⁸~~

Commented [LW17]: Redundant. See (a)1. above and (e) below. Also, if the guidance uses the term "overburdened and underserved communities," define it and recognize that states may have their own definitions of "overburdened and underserved communities."

- ~~3-2.~~ the activities to be carried out with the grant, including a preliminary work schedule covering the period of performance of the Formula grant and an identification of the estimated health, safety, habitat, and environmental benefits of plugging, remediating, or reclaiming orphaned wells; and
- ~~4-3.~~ the means by which the information regarding the activities of the State under this grant will be made available on a public website;

(b) an estimate of—

1. the number of orphaned wells in the State that will be plugged, remediated, or reclaimed;
2. the projected cost, including the basis of estimates, of—
 - a. plugging, remediating, or reclaiming orphaned wells;
 - b. remediating or reclaiming adjacent land; and
 - c. decommissioning or removing associated pipelines, facilities, and infrastructure;
3. the amount of that projected cost that will be offset by the forfeiture of financial assurance instruments, the estimated salvage of well site equipment, or other proceeds from the orphaned wells and adjacent land;

Commented [LW18]: Not included in the statute.

Commented [LW19]: Only a gross estimate of these amounts will be available until specific wells have been selected and their sites further evaluated.

⁸ Recommend using the Climate and Economic Justice Screening Tool to identify overburdened and underserved census tracts.

4. the number of jobs that will be created or saved through the activities to be funded under this grant and the assumptions and methodology to develop the estimate; and
 5. the amount of funds to be spent on administrative costs;
- (c) the definitions and processes used by the State to formally identify a well as—
1. an orphaned well; or
 2. if the State uses different terminology, otherwise eligible for plugging, remediation, and reclamation by the State; and
- (d) ~~A description of the State's plugging standards, including the witnessing requirements (qualifications of witness, documentation);~~
- (e) ~~Details of how the State will identify and prioritize the highest methane emitters and how the State will identify and prioritize well plugging and site reclamation that will remedy disproportionate burdens of adverse human health or environmental impacts of orphaned wells on communities of color, low income communities, and Tribal and indigenous communities;~~
- (f) ~~The methodology, including field indicators, sampling, and modeling approaches, to be used by the State to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the State will confirm the effectiveness of plugging activities in reducing or eliminating such contamination;~~
- (g) ~~Methods to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure, including a description of how salvaged material and equipment will be reused, recycled, or sold for scrap (with any resulting income reported to DOI);~~
- (h) ~~Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local officials and the public;~~
- (i) ~~Latitude/Longitude, type of well, surface ownership, mineral ownership (e.g., Federal, Tribal, State, private), and all other data elements and associated units of measure as indicated in the Orphaned Well Data Reporting Template available at: Legacy Pollution Remediation & Reclamation. This information is required to verify that each well has been 'documented' in accordance with BIL Sec. 40601(e)(4)(A)(iii)(II). Failure to document the wells reported in the Notice of Intent will result in a reduction in the amount a State is awarded under this grant, with such funds being made available to eligible States in future Formula grant phases;~~
- (j) ~~How the State will use funding to locate currently undocumented~~

Commented [LW20]: Not included in the statute.

Commented [LW21]: Add "summary" before "description" and incorporate in program description above.

Commented [LW22]: Change to "are intended to address." Confirming that burdens will be reversed or mitigated is challenging, and in many instances, not feasible.

Commented [LW23]: Add "when appropriate." Change "confirm" to "assess." Groundwater contamination monitoring is not appropriate, practical, or even feasible in all situations.

Commented [LW24]: Authorized but not required for federal funding. Move to recommended elements.

Commented [LW25]: Incorporate in program description above.

Commented [LW26]: Change "local officials" to "local government," which is the more inclusive term.

Commented [LW27]: Authorized but not required for federal funding. Move to recommended elements.

Commented [LW28]: Delete reference to reduction in award. DOI has no authority to reduce a state's award in this manner. It's a state's call whether there is enough information to verify the existence of a well. DOI cannot make this determination.

Move remainder to reporting requirements. States do not provide a list of wells as part of an application for funding. The IJA requires only an estimate of the number of wells to be plugged.

~~orphaned wells;~~

- ~~(k) Plans the State has to engage third parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to;~~
- ~~(l) Training programs, including pre-apprenticeships, registered apprenticeships, local and economic hire agreements for workers, and engagement with relevant labor unions with which the State intends to conduct outreach or fund in well plugging or site remediation.~~
- ~~(m) Plans the State has to support opportunities for all workers and vendors, including workers underrepresented in well plugging or site remediation, workers in traditional energy communities impacted by changing markets and technology, and workers from underserved communities to be trained and placed in good-paying jobs directly related to the project, including through workforce development programs and incorporating workforce strategy into project development;~~
- ~~(n) Procedures the State will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land;~~
- ~~(o) The State's authorities to enter Federal, Tribal, or private property, or a State's procedures to obtain landowner consent to enter such properties, in the event that any wells to be plugged will be accessed from Federal, Tribal, or privately owned surface;~~
- ~~(p) A work schedule covering the period of performance of the Formula grant, including a plan to monitor the reclaimed locations to ensure remediation and reclamation success. Such plan should include methodology and chronology of monitoring, data collection, and a plan for additional reclamation should the initial attempt be unsuccessful; and~~
- ~~(d) If applicable, a federally approved Indirect Cost Rate Agreement or statement regarding the State's intention to negotiate or utilize the de minimis rate.~~

Commented [LW29]: Authorized but not required for federal funding. Move to recommended elements.

Commented [LW30]: Edit and incorporate into program description above.

Commented [LW31]: Add "preliminary" before "work schedule" and incorporate above in description of activities to be carried out.

Commented [LW32]: Authorized but not required for federal funding. Move to recommended elements.

D. Recommended Elements

(q)

The following list includes the features the Department of the Interior has determined are important components of a successful orphaned well program. Although not required in relation to Formula grant funding, States are encouraged to incorporate these features into projects funded with Formula grants. Costs associated with approved activities will be chargeable to the grant.

For those parts that are applicable, the State should include the following information as a narrative attachment to the required elements listed above:

Commented [LW33]: An award should clearly state that costs associated with these recommended activities may be charged to the grant.

- ~~v.i.~~ Details of how the State will identify and prioritize the highest methane emitters and how the State will identify and prioritize well plugging and site reclamation that are intended to address disproportionate burdens of adverse human health or environmental impacts of orphaned wells on communities of color, low-income communities, and Tribal and indigenous communities;
- ~~vi.~~ The methodology, including field indicators, sampling, and modeling approaches, to be used by the State when appropriate to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the State will assess the effectiveness of plugging activities in reducing or eliminating such contamination;
- ~~vii.~~ Methods to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure;
- ~~viii.~~ iv. Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local government and the public;
- ~~ix.~~ v. How the State will use funding to locate currently undocumented orphaned wells;
- ~~x.~~ vi. Plans the State has to engage third-parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to;
- ~~xi.~~ vii. Training programs, including pre-apprenticeships, registered apprenticeships, local and economic hire agreements for workers, and engagement with relevant labor unions with which the State intends to conduct outreach or fund in well plugging or site remediation.
- ~~xii.~~ viii. Plans the State has to support opportunities for all workers and vendors, including workers underrepresented in well plugging or site remediation, workers in traditional energy communities impacted by changing markets and technology, and workers from underserved communities to be trained and placed in good-paying jobs directly related to the project, including through workforce development programs and incorporating workforce strategy into project development;
- ~~xiii.~~ ix. Procedures the State will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land;
- x. A plan to monitor the reclaimed locations to ensure remediation and

reclamation success. Such plan should include methodology and chronology of monitoring, data collection, and a plan for additional reclamation should the initial attempt be unsuccessful.

D.E. Restrictions on funding use

- i. States may not use more than 10 percent of the funds received as authorized under Sec. 40601(c)(2)(B)(i)) for administrative costs associated with activities listed in Section III. Administrative costs are defined in section II above.
- ii. States may apply for no more than the amount of eligibility determined by the Phase 1 F formula as published by DOI on January 31, 2022 (see in Attachment B).
- ~~iii. Consistent with Sec. 40601(c)(2)(A)(viii), States will identify and factor into their project prioritizations orphaned wells within 0.5 miles of communities of color, low income communities, and Tribal and indigenous communities. Identification of such communities will utilize established tools, such as EJScreen⁹ or CEJST.⁴⁰ Decision points and underlying assumptions, such as the number and type of environmental indicators, must be described in the application.~~

~~iv.iii.~~ In accordance with the Buy America Preference provided in the BIL and Office of Management and Budget's (OMB) Memorandum M-22-11 *Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, none of the Funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. (See Attachment C of this Guidance for additional information regarding the Buy America Preference and Waivers.) The Orphaned Well Program Office will post applicable waivers and exemptions on its website. Note, also, that property solely on private land with no public access is not subject to Buy America.

E.F. Certifications (digital signatures are acceptable)

For Formula grant applications, a certification (see Attachment A) must be submitted to the Department with the application package certifying that:

- i. Any financial assurance instruments available to cover plugging, remediation, or reclamation costs will be used by the State; and
- ii. The State acknowledges the Davis-Bacon Act requirements for the award or project and confirms that all laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2,000 funded directly by or assisted in whole or in part by funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character

Commented [LW34]: States are authorized, but not required, to address this issue with federal funding.

Commented [LW35]: The DOI Office of the Solicitor determined that property solely on private land with no public access is not subject to Buy America. This paragraph should reference that determination.

DOI should post applicable waivers on its website.

Commented [LW36]: This language tracks the statute, but DOI may need to clarify that financial assurance instruments are not required to be forfeited before the work is performed.

⁹ EJScreen: Environmental Justice Screening and Mapping Tool. US Environmental Protection Agency.

⁴⁰ Climate and Economic Justice Screening Tool. White House Council on Environmental Quality.

similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code.

V. **RECOMMENDED** STANDARDS FOR MEASUREMENT, PLUGGING, AND REMEDIATION

A. Pre- and Post-Plugging Measurement or Estimation of Air and Water Pollution

- i. States are encouraged to will conduct an inspection of each orphaned well site being considered under this grant to screen for leaks of methane and other gases—and if identified to measure or estimate the rate of such leaks—and to identify potential surface water or groundwater contamination. Such inspections may be performed immediately prior to commencement of plugging and abandonment, as long as the requisite pre-plugging information is documented. States are also encouraged to will conduct post-plugging inspections to verify the lack of gaseous emissions and water contamination from plugged wells and the achievement of vegetation performance standards appropriate to the site's future land uses. Such post-plugging inspections will must be documented to create a verifiable record of activities performed under the grant.
- ii. States are encouraged to will follow the DOI methane emission guidelines (and subsequent revisions), including all recommendations therein.¹¹
- iii. Pre- and post-plugging values of gaseous emissions (particularly methane), water contamination, and acres restored will must be included, per well, in the Final Performance Report described in Section VIII.D, VII.C, below w.

B. Well Plugging and Site Remediation Standards

- i. States with established and documented well plugging standards and regulations will require their contractors to meet those requirements. For a State that does not have established well plugging standards, it is strongly recommended that the work must reflect, at a minimum: the plugging standards in the Bureau of Land Management's Onshore Oil and Gas Order No. 2 Section III.G for plugging wells BLM OO2; or, for offshore wells, the provisions of 30 CFR Part 250.
- ii. States will meet or exceed any well plug witnessing and documentation requirements pursuant to State law.

Commented [LW37]: States are authorized, but not required, to address this issue with federal funding. Significant baseline and follow-up monitoring of this nature could consume most of the formula-grant funding available to some states, leaving little funding for actual well plugging. To support this recommendation, DOI should provide more information on expectations.

Commented [LW38]: Note that post-plugging inspections are subject to access requirements of state law.

Commented [LW39]: The technology for methane monitoring is evolving rapidly. The guidance should acknowledge and support use of new methane detection and measuring technology.

Commented [LW40]: DOI has no authority to apply federal standards on state and private lands.

¹¹ Assessing Methane Emissions from Orphaned Wells to Mmeet Reporting Requirements of the 2021 Infrastructure Investment and Jobs Act (BIL): Federal Program Guidelines. April 11, 2022. <https://www.doi.gov/sites/doi.gov/files/federal-orphaned-wells-methane-measurement-guidelines-final-for-posting-v2.pdf>

- iii. For States with established well abandonment standards (inclusive of those actions necessary to complete surface reclamation and revegetation), all well closures shall meet those requirements. If a State does not have well abandonment standards, ~~it is strongly recommended that the work a well site must~~ reflect, at minimum, the Bureau of Land Management's Reclamation and Abandonment Standards ~~to be considered plugged and fully abandoned, such that it can be reported as a completed unit~~. For additional details, see: <https://www.blm.gov/sites/blm.gov/files/Chapter%206%20-%20Reclamation%20and%20Abandonment.pdf>

Commented [LW41]: States often conduct plugging and remediation operations separately. If so, they should have flexibility to report these activities separately.

VI. EQUIPMENT AND SUPPLIES

A. Equipment.

- i. Title to equipment (i.e., tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, such as vehicles, computer equipment, etc.) acquired by a recipient with DOI funds shall vest in the recipient. The equipment may not be encumbered without the approval of the awarding agency. The equipment will be used for authorized purposes if it is needed whether the project or program continues to be supported by federal funds. When the recipient no longer needs the equipment, it may use it for other activities in accordance with agency procedures or dispose of it upon approval from the awarding agency. Equipment owned by the federal government shall be identified to indicate federal ownership. The recipient shall take a physical inventory of equipment and reconcile the results with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the cause of the difference.
- ii. Equipment records shall be maintained accurately and shall include the following information:
- (a) A description of the equipment;
 - (b) Manufacturer's serial number, model number, or other identification number;
 - (c) Source of the equipment including the award number;
 - (d) Whether title vests in the recipient or the federal government;
 - (e) Acquisition date (or date received, if the equipment was furnished by the federal government) and cost;
 - (f) Information from which one can calculate the percentage of DOI's share in the cost of the equipment (not applicable to equipment furnished by the federal government);
 - (g) Location and condition of the equipment and the date the information was reported;
 - (h) Unit acquisition cost; and
 - (i) Ultimate disposition data including date of disposal and sale price or, when a recipient compensates the DOI awarding agency for its share,

the method used to determine current fair market value.

- B. Intangible Property. Title to intangible property purchased or otherwise acquired under an award or sub-award vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of the DOI awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with agency procedure.
- C. Supplies. Title to intangible property purchased or otherwise acquired under an award or sub-award vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of the DOI awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with agency procedure.

VII. FEDERAL AND TRIBAL COORDINATION

Efficiency and cost-effectiveness in well plugging and site remediation will be maximized by ensuring proper coordination in these activities among States, Tribes, and the Federal government. As early as practical—preferably before State grant applications are submitted—States should provide a primary contact for coordination with the relevant offices of Tribal or Federal land management agencies to orphanedwells@ios.doi.gov, ~~to ensure the maximum level of coordination between States, Federal land management agencies, and Tribes, including on scheduling similar field activities where State, Federal, or Tribal land may be adjacent.~~ States may reach out to ~~the Interstate Oil and Gas Compact Commission (IOGCC) or~~ DOI's Orphaned Wells Program Office for a list of appropriate contacts for the relevant offices of Tribal and Federal land management agencies.

When undertaking work on Federal land under a cost-sharing, Good Neighbor, or other arrangement with the Federal government, States must collect the data required to be reported under the BIL for wells plugged and sites remediated on Federal land, unless all such data collection is otherwise captured in the terms of a lawful agreement between the State and the Federal land manager (e.g., cooperative agreement). Early coordination with Federal agencies is encouraged to ensure that States are collecting the proper data in a format that can most easily be transferred to the Federal government.

When undertaking work on private or State land adjacent to Tribal or Federal land, States are encouraged to communicate ~~must consult~~ with Federal agencies and Tribal representatives to ensure appropriate and efficient collaboration on compliance issues (e.g., cultural resources, endangered species, sacred sites) and to minimize disruption of planned events, operations, or land management activities.

Expenses associated with State, Tribal, and Federal coordination, such as Tribal cultural monitoring, may be charged to a formula grant as administrative costs or, when concerning a particular project, as project costs.

Commented [LW42]: DOI should retain the lead role in facilitating this coordination.

Commented [LW43]: Further discussion is needed on the meaning of the term "adjacent" and the best ways to accomplish the desired communication.

VIII. REPORTING REQUIREMENTS

- A. *Semi-Annual Reports*: Consistent with 2 C.F.R. § 200.328, States must submit financial and performance reports to the DOI every 6 months. ~~with the first report will cover the due 6 months following from the date of receipt of funds, and will be due within 30 days of the close of that period. Subsequent reports will be submitted~~ every 6 months thereafter through the grant period of performance. Financial reporting will use [SF-425](#).
- B. *Personal Property report*: States will be required to submit an annual Tangible Personal Property Report (SF-428) if grant funds are used to purchase equipment.
- C. *Significant Developments* (2 CFR 200.329): Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the State must inform DOI as soon as the following types of conditions become known:
- Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- D. *Final Financial and Performance Reports*: Consistent with 2 C.F.R. § 200.329, States must submit final financial and performance reports to the DOI within 120 days of period of performance end date.
- E. *Data Collection and Reporting*
- In order to standardize reporting requirements and ensure that the Federal resources are well-spent and meet statutory objectives, States must track the data outlined below for all ~~wells plugged, remediated, or reclaimed actions-taken~~ using orphaned well grant funding. ~~Such data elements will help inform, and be incorporated into, the processes being developed for the forthcoming Performance grants listed in Section I above.~~ As appropriate, data tracking may be accomplished through existing systems such as the Groundwater Protection Council's Risk Based Data Management System (RBDMS):
 - Well location information (e.g., latitude/longitude);
 - Well type (e.g., orphaned production or disposal well);
 - ~~Bureau of Labor Statistics NAICS codes for each of the employees working on each well site, along with the hours each employee spent on each site;~~

Commented [LW44]: Should this report be submitted within 30 days of the close of the six-month period? Otherwise the first report will cover just five months.

Commented [LW45]: There's no need to address Performance grants here, although the guidance for Performance grants should be issued expeditiously. Some states will be able to use the funding more effectively if they apply for one or more Performance grants before applying for the Formula grant.

Commented [LW46]: This item is nonsensical and unreasonable. Data by NAICS codes are posted quarterly by employer and county. Prevailing wage requirements capture the hours worked in a particular worker classification, but not the well and/or well site where each hour of work was completed. Additionally, many hours are spent on projects that cannot be attributed to an individual well. The level of effort required to track labor in this detail goes far beyond the requirements of Davis-Bacon regulations.

~~(d) The population living within a half mile radius of each well being plugged;~~

~~(e)(c)~~ If applicable, ~~p~~Pre-plugging methane emission measurement (unless initial screening was non-detect);

~~(f)(d)~~ If applicable, ~~p~~Post-plugging methane emission measurement (or non-detect screening);

~~(g)(e)~~ If applicable, ~~s~~Surface water contamination identified;

~~(h)(f)~~ If applicable, ~~s~~Surface water contamination remediated;

~~(i)(g)~~ If applicable, ~~g~~Groundwater contamination identified;

~~(j)(h)~~ If applicable, ~~g~~Groundwater contamination remediated;

~~(k)~~ Acreage impacted by well and infrastructure (site footprint);

~~(l)(i)~~ If applicable, ~~r~~Revegetation performance standard monitoring start date;

~~(m)(j)~~ If applicable, ~~r~~Revegetation performance standard attainment date (project complete);

(n) Actual total cost per well of plugging and surface reclamation; and

(o) If applicable, ~~i~~Identification of projects located in a community of color, low-income community, or Tribal and indigenous community.

- ii. This list highlights important parameters that DOI will report to Congress annually and is a subset of the larger data set the States must report as part of the performance reports (VIII.A and D.) and detailed in the Orphaned [Well Data Reporting Template](#): States must update the Data Reporting Template information ~~in conjunction with the semi-annual and final reporting required by VIII.A and D by the end of the month following the month in which the activity occurred~~. Such information may be provided to DOI via the Orphanedwells@ios.doi.gov mailbox, mobile app, or other secure data transfer mechanisms, as those become available.

- iii. States that apply for a Formula grant should note that non-sensitive information regarding the activities under such grants are required to be posted on a public website under Sec. 40601(c)(4)(B)(i)(III).

F. After providing the grantee an opportunity to redact personally identifiable or proprietary information, the Department of the Interior may post awarded grant applications on a publicly available web site.

G. The Department of the Interior will publish a summary of performance accomplishments on a publicly available web site, following submission by the States of the report required in Section ~~VIII.D.VII.C~~ of this guidance.

IX. DAVIS-BACON ACT REQUIREMENTS

All laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work on an award or project in excess of \$2,000 funded directly by or assisted in whole or in part by funds

Commented [LW47]: IIA does not require this information, and the half-mile radius is an arbitrary choice. With the location information states will provide on plugged wells, DOI can obtain this information on its own if and when needed.

Commented [LW48]: The IIA does not require this information. The concept, which may make sense on Federal land, does not readily translate to private land.

Commented [LW49]: The IIA does not require this level of reporting by the states. DOI must work with the states to reach agreement on the type of data the states will report to DOI through the template.

Commented [LW50]: Monthly reporting is excessive and will require constant revision of preliminary information.

made available under Formula grants shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA).

Applicants shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2,000 funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). Such acknowledgment is included in the accompanying Formula Grant Certification to serve as written assurance by the applicant.

Recipients of funding will also be required to undergo DBA compliance training and to maintain competency in DBA compliance. The U.S. Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

For additional guidance on how to comply with DBA provisions and clauses, see [DOL: Davis-Bacon Act](#)

X. DOI STANDARD AWARD TERMS AND CONDITIONS

- A. DOI Standard Award Terms and Conditions will be included in all Formula grants, at the time of award. These standard terms and conditions can be found at: [Standard Award Terms and Conditions](#).
- B. Under 2 C.F.R. § 200.329, the Federal awarding agency may make site visits as warranted to ensure appropriate fiscal accountability and oversight. States shall provide Federal awarding agency access to relevant documentation in State possession and facilitate, to the extent allowable under State law, Federal awarding agency access to project sites.
- C. The DOI Freedom of Information Act Office provides guidelines to requestors of grant applications around what information may be redacted from applications. This information includes patent rights, confidential financial information, personally identifiable information (PII), and detailed budget, consultant, and business assets information. 2 CFR § 200.338 places limitations on public access to award-related documents.
- D. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage

through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products.

Attachment A

State Certification

Orphaned Well Site Plugging, Remediation, And Restoration

Formula Grant

Consistent with Sections 40601(c)(4)(A)(iii) and 40601(c)(4)(B)(iii) of the Infrastructure Investment and Jobs Act (aka Bipartisan Infrastructure Law), the State or Commonwealth of

_____ certifies that:

1. Any financial assurance instruments available to cover plugging, remediation, or reclamation costs will be used by the State; and
2. The State acknowledges the Davis-Bacon Act requirements for the award or project and confirms that all laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2,000 funded directly by or assisted in whole or in part by funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code.

Commented [LW51]: This language tracks the statute, but DOI may need to clarify that financial assurance instruments are not required to be forfeited before the work is performed.

Certifying Official Name

Title

Certifying Official Signature

Date

Attachment B**State Formula Grant ~~Phase 1~~ Eligibility**

	State	State Reported Projected Cost (12/31/21)	# Orphaned Wells Reported (12/31/21)	Job Loss	Phase One Formula Eligibility
1	Alabama	\$4,230,000	91	(117)	\$436,000
2	Alaska	\$42,616,250	12	(3,300)	\$7,341,000
3	Arizona	\$12,969,230	245	(344)	\$1,262,000
4	Arkansas	\$6,375,000	425	(388)	\$1,448,000
5	California	\$974,949,035	5,356	(4,750)	\$36,495,000
6	Colorado	\$47,343,791	625	(6,251)	\$14,006,000
7	Illinois	\$163,355,000	4,415	(189)	\$9,553,000
8	Indiana	\$77,688,521	1,459	(62)	\$3,647,000
9	Kansas	\$35,765,917	5,477	(401)	\$8,722,000
10	Kentucky	\$235,034,398	11,728	(93)	\$20,461,000
11	Louisiana	\$401,704,649	4,605	(4,112)	\$22,396,000
12	Michigan	\$31,861,500	439	(146)	\$1,522,000
13	Mississippi	\$1,120,000	14	(885)	\$1,770,000
14	Missouri	\$29,094,000	4,849	-	\$6,975,000
15	Montana	\$14,254,250	279	(343)	\$1,331,000

Commented [LW52]: DOI must insert the total amount each state is eligible to receive here.

16	Nebraska	\$19,311,000	471	(29)	\$1,075,000
17	New Mexico	\$290,611,502	1,741	(5,335)	\$18,720,000
18	New York	\$248,062,500	4,897	(1)	\$11,573,000
19	North Dakota	\$38,758,000	186	(6,797)	\$14,318,000
20	Ohio	\$1,548,851,635	19,662	(998)	\$59,852,000
21	Oklahoma	\$501,876,011	17,865	(9,884)	\$53,168,000
22	Pennsylvania	\$1,831,573,744	26,908	(3,021)	\$79,178,000
23	Texas	\$481,800,000	7,396	(32,200)	\$82,563,000
24	Utah	\$1,534,852	41	(650)	\$1,355,000
25	West Virginia	\$991,000,000	6,309	(762)	\$30,293,000
26	Wyoming	\$19,927,595	1,311	(4,304)	\$10,539,000
	TOTAL	\$8,051,668,380	126,806	(85,362)	\$500,000,000

Attachment C

Buy America Preference for DOI Grants

I. Buy America Domestic Procurement Preference.

As required by [Section 70914 of the BIL](#), on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

II. Waivers

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers.

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than fifteen (15) days. Waiver requests will also be reviewed by the OMB Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DOI Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).

10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer. Questions pertaining to waivers should be directed to the financial assistance awarding officer.

III. Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

Attachment D

Annex to the Grant Guidance - This Annex provides instructions and awareness on standard grants management requirements that are part of applying for a Federal award.

1. Unique Entity Identifier and System for Award Management (SAM)
2. Conflict of Interest Disclosure
3. Single Audit Reporting Statement
4. Certification Regarding Lobbying and Disclosure Requirements
5. Data Availability
6. Agency Review Process
7. Additional Reporting Requirements
 - a. Significant Development Reports
 - b. Conflict of Interest Disclosures
 - c. Other Mandatory Disclosures
 - d. Reporting Matters Related to Recipient Integrity and Performance
8. Payments

1. Unique Entity Identifier and System for Award Management (SAM)

Before submitting an application, applicants must be registered in SAM.gov and have a Unique Entity Identifier (UEI) which replaces the Data Universal Numbering System (DUNS) number from Dun & Bradstreet in April 2022. Registration is through the SAM.gov website, which has user guides and other information to assist you with registration under the “Help” tab if you are not already registered. The Grants.gov “Register with SAM” page also provides detailed instructions, and applicants can contact the supporting Federal Service Desk for help as needed. A Federal award may not be made to an applicant that has not completed the SAM.gov registration. Federal award recipients must renew and validate their SAM registration at least once every 12 months to maintain an active SAM.gov registration with current information through the life of their Federal award(s).

Applicants that are registered with SAM just need to login to get their UEI, SAM generates it automatically.

2. Conflict of Interest Disclosure

Per the Financial Assistance Interior Regulation (FAIR), 2 CFR §1402.112, applicants must state in their application if any actual or potential conflict-of-interest exists at the time of submission.

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict-of-interest provisions in 2 CFR 200.318 apply.

(b) Notification.

(1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112.

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Grants Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(c) Restrictions on lobbying. Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

(d) Review procedures. The Grants Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(e) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.339, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

3. Single Audit Reporting Statement

All non-Federal entities expending \$750,000 USD or more in Federal award funds in the applicant's fiscal year must submit a Single Audit report for that year through the Federal Audit Clearinghouse's Internet Data Entry System. U.S. States must state if your organization was or was not required to submit a Single Audit report for the most recently closed fiscal year in your application. If your organization was required to submit a Single Audit report for the most recently closed fiscal year, provide the EIN (Tax ID) associated with that report and state if it is available through the Federal Audit Clearinghouse website.

4. Certification Regarding Lobbying and Disclosure Requirements

Applicants requesting more than \$100,000 in Federal funding must certify to the statements in 43 CFR Part 18, Appendix A-Certification Regarding Lobbying. If this application requests more than \$100,000 in Federal funds, the Authorized Official's signature on the appropriate SF-424,

Application for Federal Assistance form also represents the entity's certification of the statements in 43 CFR Part 18, Appendix A.

Applicants and recipients must not use any federally appropriated funds (annually appropriated or continuing appropriations) or matching funds under a Federal award to pay any person for lobbying in connection with the award. Lobbying is influencing or attempting to influence an officer or employee of any U.S. agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the award. Applicants and recipients must complete and submit the SF-LLL, "Disclosure of Lobbying Activities" form if the Federal share of the proposal or award is more than \$100,000 and the applicant or recipient has made or has agreed to make any payment using non-appropriated funds for lobbying in connection with the application or award. The SF-LLL form is available with this Funding Opportunity on Grants.gov. See 43 CFR, Subpart 18.100 for more information on when additional submission of this form is required.

5. Data Availability

Per the Financial Assistance Interior Regulation (FAIR): 2 CFR §1402.315

- (a) All data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, valuation products or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual, resulting from a financial assistance agreement is available for use by the DOI, including being available in a manner that is sufficient for independent verification.
- (b) The Federal Government has the right to:
 - (1) Obtain, reproduce, publish, or otherwise use the data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, produced under a Federal award; and
 - (2) Authorize others to receive, reproduce, publish, or otherwise use such data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, for Federal purposes, including to allow for meaningful third-party evaluation.

6. Agency Review Process

The awarding agency conducts a review of the SAM.gov Exclusions database for all applicant entities and their key project personnel prior to award. The awarding agency cannot award funds to entities or their key project personnel identified in the SAM.gov Exclusions database as ineligible, prohibited/restricted or otherwise excluded from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits, as their ineligibility condition applies to this Federal program.

Prior to award, the awarding agency will evaluate the risk posed by applicants as required in 2 CFR 200.205. The awarding agency documents applicant risk evaluations using DOI's "Financial Assistance Recipient Risk Assessment" form. Prior to approving awards for Federal

funding in excess of the simplified acquisition threshold (currently \$250,000), the awarding agency is required to review and consider any information about or from the applicant found in the Federal Awardee Performance and Integrity Information System. The awarding agency will consider this information when completing the risk review. The awarding agency uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more of the specific award conditions in 2 CFR 200.207 should be applied to the award.

7. Additional Reporting Requirements

Significant Development Reports. Events may occur between the scheduled performance reporting dates which have significant impact upon the supported activity. In such cases, recipients are required to notify the awarding agency in writing as soon as the recipient becomes aware of any problems, delays, or adverse conditions that will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of any corrective action(s) taken or contemplated, and any assistance needed to resolve the situation. The recipient should also notify the awarding agency in writing of any favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Conflict-of-Interest Disclosures. Recipients must notify the program immediately in writing of any conflict of interest that arises during the life of their Federal award, including those reported to them by any subrecipient under the award. Recipients must notify the program in writing if any employees, including subrecipient and contractor personnel, are related to, married to, or have a close personal relationship with any Federal employee in the Federal funding program or who otherwise may have been involved in the review and selection of the award. The term employee means any individual engaged in the performance of work pursuant to the Federal award. Recipients may not have a former Federal employee as a key project official, or in any other substantial role related to their award, whose participation put them out of compliance with the legal authorities addressing post-Government employment restrictions. See the U.S. Office of Government Ethics website for more information on these restrictions. The awarding agency will examine each conflict-of-interest disclosure based on its particular facts and the nature of the project and will determine if a significant potential conflict exists. If it does, the awarding agency will work with the recipient to determine an appropriate resolution. Failure to disclose and resolve conflicts of interest in a manner that satisfies the awarding agency may result in any of the remedies described in 2 CFR 200.339 Remedies for Noncompliance, including termination of the award.

Other Mandatory Disclosures. Applicants must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that receive a Federal award including the terms and conditions outlined in 2 CFR 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required

disclosures can result in any of the remedies described in 2 CFR 200.339 Remedies for Noncompliance, including suspension or debarment.

Reporting Matters Related to Recipient Integrity and Performance. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings in accordance with Appendix XII to 2 CFR 200.

8. Payments

Domestic recipients are required to register in and receive payment through the U.S. Treasury's Automated Standard Application for Payments (ASAP), unless approved for a waiver by the awarding agency program. The recipient will be notified of the ASAP enrollment process, or if already enrolled, the process to link their ASAP account to the Agency.